IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.75 OF 2004
IN
COMPANY PETITION NO.319 OF 1993

Gujarat Lease & Finance Ltd. ..Petitioners.
Vs.
The Official Liquidator
Consolidated Foundation
(India) Ltd. (In Liqn.) ..Respondents.

Ms.Z.Irani i/b.Aras & Co. for the Applicant.
Ms.K.V.Gautam, Dy.Official Liquidator present.

CORAM: A.M. KHANWILKAR, J.
DATED: 18TH AUGUST, 2005

P.C. :
1. Heard counsel for the Applicant and representative of the Official Liquidator. By this application, the applicant seeks direction against the Official Liquidator to hand over vacant and peaceful possession of the premises situated at 108, Owners Industrial Estate, Gabrial Road, Mahim (W), Mumbai-16 in terms of order passed by the Appellate Bench of the Small Causes Court, Mumbai dated 17.4.2003 in Appeal No.523 of 2001. The applicant is ready to deposit a sum of Rs.6,94,000/- payable to the Respondents being the deposit lying credited with the applicant after adjustment of the compensation at the rate of Rs.1000/- per month and payable by the Respondents from 1.6.1999 to 1.2.2004 in terms of the agreement, as directed by the Appellate Bench of the Small Causes Court, Mumbai in

its order dated 17.4.2003.

2. It is not in dispute that the premises are presently lying unoccupied and unused though in possession of the Official Liquidator. Indeed, the Official Liquidator is taking steps to challenge the order passed by the Appellate Bench of the Small Causes Court dated 17.4.2003 in Appeal No.503 of 2001. However, in my view, the offer given by the applicant seems to be reasonable and, if accepted, would meet the ends of justice. According to the applicant, the applicant will take over possession of the abovesaid premises from the Respondent Official Liquidator on condition that the applicant will not part with possession of the said premises without seeking prior directions from this Court. as the order passed by the Appellate Bench would be subjudiced in view of the steps being taken by the Official Liquidator to challenge the same. In other words, possession of the aforesaid premises can be handed over to the applicant subject to the outcome of the said proceedings.

3. The applicant is willing to file affidavit of undertaking that possession will be restored with the Official Liquidator forthwith if such a

direction is passed by the High Court in the Proposed Writ Petition to be filed by the Official Liquidator against the decision of the Appellate Bench of the Small Causes Court dated 17.4.2003 in Appeal No.523 of 2001 and that the applicant shall not create third party right, title or interest in the said premises without seeking prior permission of this Court.

4. In so far as the payment is concerned, during the course of arguments, the learned counsel for the Applicant, on instructions of the applicant, who is present in Court shows willingness to deposit the entire amount of Rs.7,50,000/- in this Court which can be handed over to the Official Liquidator.

5. In so far as the claim of compensation at the rate of Rs.1000/- per month from 1.6.1999 to 1.2.2004 is concerned, that will be subject to the outcome of the proceedings to be taken out by the Official Liquidator to challenge the order passed by the Appellate Bench dated 17.4.2003 in Appeal No.523 of 2001. This assurance is accepted.

6. Accordingly, this application succeeds on the following terms :

i) The possession of the premises situated at 108, Owners Industrial Estate, Gabrial Road, Mahim (W), Mumbai-16 be handed over by the Respondents to the applicant only after undertaking is filed by the applicant in this Court that the possession is being accepted subject to the outcome of the proceedings pending in this Court being Suit No.4043 of 1996 as well as the proposed Writ Petition to be filed against the decision of the Appellate Bench of the Small Causes Court dated 17.4.2003 in Appeal No.523 of 2001.

ii) The applicant shall also file an undertaking that the applicant will not create any third party right, title or interest in the said premises without seeking prior permission of this Court and further that possession will be restored back to the Official Liquidator as and when such direction is passed by this Court.

iii) The applicant shall deposit Rs.7,50,000/- in this Court within a period of 4 weeks from

today as assumed, which will be handed over to the Respondent Official Liquidator.

iv) In so far as the claim of the applicant towards the compensation payable from 1.6.1999 to 1.2.1002 in terms of the direction issued by the Appellate Bench of the Small Causes Court vide order dated 17.4.2003 in Appeal No.523 of 2001, the same shall be subject to the outcome of the proposed Writ Petition to be filed by the Respondent in this Court challenging the decision of the Appellate Bench of the Small Causes Court. In other words, if the proposed Writ Petition filed by the Respondent Official Liquidator is dismissed, and the direction of the Appellate Bench of the Small Causes Court to pay compensation is affirmed, the Official Liquidator will make arrangement to pay such amount to the applicant by seeking orders on the report to be filed within 4 weeks from the decision of this Court in the proposed Writ Petition.

7. On the applicant filing undertaking in the above terms and depositing the amount as aforesaid,

possession of the aforesaid premises be handed over to the applicant.

8. Company Application is accordingly disposed of on the above terms.